

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 93-17

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Rosendale, New York)

RM-8170

## NOTICE OF PROPOSED RULE MAKING

Adopted: January 29, 1993; Released: February 17, 1993

Comment Date: April 12, 1993

Reply Comment Date: April 27, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by the State University of New York ("petitioner"), licensee of noncommercial educational station WFPN, Channel 204A, Rosendale, New York. Petitioner requests the allotment of Channel 273A to Rosendale and the modification of Station WFPN's license to specify Channel 273A.

2. Petitioner states that Station WFPN is a share-time facility with Station WRHV, Channel 204B, Poughkeepsie, New York, and thus cannot operate fulltime on its present channel. In order to fulfill its desire to improve the service Station WFPN provides to Rosendale, petitioner requests that commercial Channel 273A be allotted to Rosendale and Station WFPN's license modified accordingly.

3. We believe the public interest would be served by proposing the allotment of Channel 273A to Rosendale and the modification of Station WFPN's license accordingly since it could enable full-time operation by the station and thereby improved service to Rosendale. We also propose to modify Station WFPN's license to specify operation on Channel 273A in lieu of its present Channel 204A. Because the petitioner is seeking modification to a channel of the same class, Station WFPN's license can be modified without providing an opportunity for competing expressions of interest. However, we note that should another party express an interest in providing Rosendale with an additional local service, Channel 255A is available for allotment. Channel 273A can be allotted to Rosendale in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.7 kilometers (2.9 miles) southeast to avoid a short-spacing to Station WUUU, Channel 273B, Rome, New York.<sup>1</sup> Canadian concurrence in the allotment at Rosendale is required since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

4. Petitioner has not requested that Channel 273A be reserved for noncommercial educational use. In this regard, Commission policy generally does not permit the reservation of a commercial channel for noncommercial use except where channels in the reserved portion of the FM band (Channels 201-220) are not available due to TV Channel 6 interference or foreign use of the noncommercial educational band. While Rosendale is located within 320 kilometers (200 miles) of the U.S.-Canadian border, petitioner has not provided any information regarding the availability of channels in the reserved portion of the band. It is requested that the petitioner clarify whether it seeks to have Channel 273A allotted as a reserved or non-reserved channel. If it does wish to have Channel 273A reserved for noncommercial educational use, petitioner is requested to provide an appropriate showing demonstrating that channels within the reserved portion of the FM band are unavailable due to the proximity of a TV Channel 6 station and/or use of the channels by Canadian stations.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Present	Channel No. Proposed
Rosendale, New York,	--	273A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before April 12, 1993, and reply comments on or before April 27, 1993, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Mr. Lewis Rosenthal  
State University  
of New York  
State University  
Plaza  
Albany, New York 12246  
(Petitioner)

Kyle E. Magrill  
Magrill  
& Associates  
P.O. Box 456  
Orange Lake,  
Florida 32681  
(Consultant)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

<sup>1</sup> The coordinates for Channel 273A at Rosendale are North

Latitude 41-49-14 and West Longitude 74-02-13.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.